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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1095

JERRY J. ACUFF, GARNER E. ALLEN, GEORGE J. BULLOCK, CORBETTE W. CARLISLE, C. L. CARTER, DONALD W. CARTER, GEORGE W. DEAN, DEWEY R. FAIRCLOTH, M. T. FRAZIER, A. J. GIDDENS, BOBBY HARVISON, CHARLES W. HAYS, JIMMY D. HESTER, MIKE KITTRELL, T. W. KITTRELL, PHILLIP LEE, ROBERT S. MCCOY, HERBERT RAY MEITZLER, D. W. NARAMORE, WILLIAM I. PLATT, A. C. PUGH, JR., JAMES W. RICHARDSON, L. T. ROBBINS, J. I. RUSSELL, CHARLES W. SCHULER, B. R. SINGLETARY, R. C. SKIDMORE, DONALD L. WARD, J. D. WHITMAN, BOBBY N. WHITTEN, WILLIAM A. WINTERS,

Petitioners,

v.

UNITED PAPERMAKERS AND PAPERWORKERS, AFL-CIO; INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPERMILL WORKERS, AFL-CIO; and SCOTT PAPER COMPANY, SOUTHERN DIVISION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

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OPINION BELOW

The Opinion of the Court of Appeals is reported at 404 F.2d 169 (1968); it is appended hereto at pp. 1a-5a. The District Court did not render an opinion.

JURISDICTION

The Court of Appeals for the Fifth Circuit entered its opinion and judgment on ~~December~~ NOV 27, 1968. The jurisdiction of this Court is conferred by 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. May an arbitrator deny to employees, covered by a collective bargaining agreement, representation by their retained, ready, willing, and able counsel, thereby forcing them to accept representation by unions' counsel, in arbitration proceedings at which their jobs are at stake, and the union arguably has an interest conflicting with that of the employees, conformably with the first amendment and the due process clause of the fifth amendment of the Constitution of the United States, the United States Arbitration Act § 10, 9 U.S.C. § 10, and the principles of federal labor law?

2. May a United States District Court, under the circumstances and conformably with the authorities set forth in Question one, deny a motion by the employees to intervene in a pending case (under the auspices of which case the arbitration was held) without a hearing or otherwise receiving evidence on the employees' allegations of inadequate representation by the union through its counsel?

3. May a Court of Appeals, in affirming the District Court, under the circumstances and conformably with the authorities set forth in Questions one and two, find that union representation was in fact adequate when the record contains only, insofar as is pertinent to this determination (and other than the employees' conclusionary allegation of inadequacy), the unions' original complaint to compel arbitration and the arbitrator's decision, neither of which deal with this question?

Constitutional and Statutory Provisions Involved

The first amendment and the due process clause of the fifth amendment of the Constitution of the United States are appended at p. 6a.

United States Arbitration Act § 10, 9 U.S.C. § 10, and the National Labor Relations Act, § 9(a), 29 U.S.C. § 159 (a) are appended at pp. 6a-7a.

STATEMENT OF THE CASE

During November, 1966, an unauthorized work stoppage occurred at the plant of respondent Scott Paper Company (the "Company"). (R. 24) Sixty-three employees were subsequently discharged by the Company (R. 26). On February 8, 1967 the original complaint herein (R. 1-13) was filed by the respondent Unions against the Company seeking arbitration of the grievances of the discharged employees. Pursuant to stipulation between the Unions and the Company (R. 14-16) the court ordered arbitration of the disputes and retained jurisdiction (R. 17).

At the arbitration proceedings the petitioners herein (the "Employees") filed oral and written motions with the arbitrator to be represented by counsel of their choice, but the motions were denied and only the Unions' counsel was allowed to represent them. (R. 19, 62) The arbitration, by award dated August 17, 1969, resulted in the reinstatement without back pay of all but sixteen of the grievants. (R. 55)

As shown by the absence thereof from the record neither the Unions nor the Company initiated any further proceedings in the district court, *i.e.*, review of the arbitrator's award was not sought. On November 14, 1967, after ample time had passed to allow the Unions to seek review in the district courts of the arbitration award, the sixteen employees (fifteen of whom are petitioners here) who were not awarded reinstatement filed a "Motion to Intervene as Plaintiffs" accompanied by an "Intervenor's Complaint and

Motion for Vacation in Part of Arbitration Award." (R. 18-20) On the next day seventeen (sixteen of whom are petitioners here) of those who were reinstated without back pay filed a similar motion and complaint. (R. 60-62) Both motions alleged that intervention was proper under Fed. R. Civ. P. 24(a)(2)[1] and that their interests "have not and may continue to be inadequately represented by the present plaintiffs . . ." (R. 18, 60). Both complaints asserted jurisdiction based on the United States Arbitration Act § 10, 9 U.S.C. § 10 (jurisdiction having already been acquired by the original complaint's assertion of the Labor Management Relations Act § 301, 29 U.S.C. § 185); alleged their denial of right to be represented by special counsel at the arbitration proceedings despite timely assertion thereof; incorporated the arbitrator's decision (R. 21-60); and sought vacation thereof. (R. 19-20, 61-62)

The motions to intervene were denied without opinion by order dated January 31, 1968 (R. 63).

The collective bargaining agreement between the Company and the Union contains a no-strike clause which includes the following:

> In the event of any interruption of work the Union shall forthwith do eveything within its power to secure the immediate return of the employees to work. (R. 30)

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[1] In the Court of Appeals the question of the right to intervene was treated separately; the substantive decision of the court that petitioners were not entitled to counsel of their choice effectively disposed of the question of the right to intervene; hence said question, being thereby necessarily comprised within the substantive questions, is not separately dealt with herein.

REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO CONSIDER WHETHER THE DUE PROCESS CONSIDERATIONS OF THIS COURT'S INTERPRETATION OF THE UNITED STATES ARBITRATION ACT, ANNOUNCED IN *COMMONWEALTH COATINGS CORP. V. CONTINENTAL CASUALTY CO.*, 89 S. CT. 337 (1968), APPLY WITH REGARD TO COUNSEL IN A LABOR ARBITRATION PROCEEDING.

If a man has a lawyer, he has a right to be represented by that lawyer.

> "If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and therefore of *due process* in the constitutional sense." *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

Cf. Corfield v. Coryell, 6 F. Cas. 546, 552 (No. 3230) (C.C. E.D. Pa. 1823) (fundamental privilege and immunity in a state court "to institute and *maintain action* . . ." (emphasis added).)

The Court is urged to grant certiorari and take this opportunity to make explicit the right of a person, in an arbitration proceeding, to be represented by his retained counsel.

Given the indisputable premise that there are strong due process considerations when a man retains a member of the bar to represent him in a trial atmosphere before a tribunal having power over his livelihood, the entire foundation of *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 89 S. Ct. 337 (1968) applies here. This right, too, is so elementary as to be "taken for granted in every judicial proceeding . . .", 89 S. Ct. at 338; the lawyer's partiality is as important as the judge's "impartiality" *Id.*

Here the governing principles of the federal labor law of employee-union relations[2] generally and the portion of the widely-used no-strike clause (quoted *supra*, p. 4) in particular create as great a possibility of bias or conflict of interest[3] on the part of counsel as the payments which "were a very small part of [the arbitrator's] income * * *" 89 S. Ct. at 339 (quoting the Court of Appeals' opinion, 382 F.2d at 1011).[4]

Here the statutory basis for invocation of due process principles is equivalent; if the arbitrator's business interests required vacation of the award under the United States Arbitration Act §§ 10(a)[5] and 10(b),[6] then §§ 10(c)[7] and 10 (d)[8] require it where the arbitrator refused to even hear the Employees' chosen counsel. He thereby foreclosed the hearing of the evidence counsel may have chosen to present,

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[2]As the court below phrased it, "to some extent the interests of particular individuals are subordinated to the interests of the group. . ." (3a). This concept has been expressed by this Court, but *cf.* Elgin J.&E. Ry. v. Burley, 325 U.S. 711, 733-34 (1945), *aff'd on rehearing*, 327 U.S. 661 (1946). Here the individual interests have been subordinated to a greater extent than the rationale of this statement calls for.

[3]Aspects of this conflict are discussed *infra*, p. ~~10a-11a~~ 10-11.

[4]Cf. ABA CANONS OF PROFESSIONAL ETHICS NO. 6 (conflicting interests).

[5]". . . corruption, fraud, or undue means." 9 U.S.C. § 10(a).

[6]". . . evident partiality or corruption in the arbitrators . . ." 9 U.S.C. § 10(b).

[7]"Where the arbitrators were guilty of misconduct. . . . in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced." 9 U.S.C. § 10(c).

[8]"Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(d).

and prejudiced the Employees' right to have their cases managed by their chosen advocate–in short, the arbitrator "imperfectly executed" his powers so that the award lacked mutuality.

Commonwealth Coatings noted "a *constitutional* principle" involved and found the same concept in the Arbitration Act, 89 S. Ct. at 339. It is thus of no moment that it is the Unions and not the Employees who are the nominal complaining parties;[9] obviously the Employees are the real parties in interest and any exaltation of the style of the action over substance is out of place in a constitutional context.

A showing of actual prejudice is not customarily required where notions of fundamental fairness have been transgressed, see, *e.g.*, *Commonwealth Coatings; Chandler v. Fretag*, 348 U.S. 3 (1954); *Powell v. Alabama*, 287 U.S. 45, 50 (1932) ("unnecessary to discuss the facts of the case . . ."). Employees contend that the right to their retained counsel is so fundamental that no prejudice need be shown to vacate the award that ensued after the denial of the right. *Cf. NAACP v. Button*, 371 U.S. 415, 432 (1963) ("possible applications of the statute in other factual contexts"). Alternately they contend that, actual prejudice having been alleged (R. 18, 60), the case should be remanded to the district court for proof (the court denied the motion to intervene without receiving evidence or responsive pleadings). In most areas the alternative contention would not be necessary, but the choice between the contentions merits consideration by this Court because of "the unique role played by the duty of fair representation doctrine in the scheme of

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[9]The Court of Appeals recognized this principle simply as the proper interpretation of the Federal Rules of Civil Procedure but then, in the very next sentence, reverted to overly technical construction of the pleadings against the Employees by objecting to inclusion of their allegation of prejudice in their motion rather than their complaint attached thereto. (2a-3a n. 2).

federal labor laws." *Vaca v. Sipes*, 386 U.S. 171, 188 (1967).

The position of counsel in an arbitration proceeding is on a par with that of an arbitrator for the same reasons stated in *Commonwealth Coatings*—*e.g.*, the proceeding is largely insulated from appellate review. See 89 S. Ct. at 339. If the parties are to truly be "the architects of their own arbitration . . .", 89 S. Ct. at 340 (White, J. concurring) they must be able to use their own counsel.

II.

CERTIORARI SHOULD BE GRANTED TO CONSIDER THE "OTHER SIDE OF THE COIN" OF *UNITED MINE WORKERS v. ILLINOIS STATE BAR ASSOCIATION*, 389 U.S. 217 (1967) AND *BROTHERHOOD OF RAILROAD TRAINMEN v. VIRGINIA*, 377 U.S. 1 (1964).

The thirty-one Employees here merely seek to "join together and assist one another in the assertion of their legal rights by collectively hiring an attorney to handle their claims." *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 221 (1967). This is a protected first amendment right. *Id.*

It is anomalous that organized labor, having invoked the aid of this court to take the lead in providing counsel on a reliable and economical basis, should involve itself in attempting to dictate the choice of counsel when the Unions' own interests are at issue. This smacks too much of what the opposition in *United Mine Workers* and *Railroad Trainmen* professed (spuriously, it seemed) to fear. At any rate, a decision in the Employees' favor here would make explicit the symmetry envisaged by these two cases[10]—having assured adequate representation to many who would otherwise not receive it, legal representation must not be confined to a rigid mold. In *United Mine Workers* the factual

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[10] As well as *NAACP v. Button*, 371 U.S. 415 (1963).

context was different but the message was fundamental: "The members may employ other counsel if they desire . . . ." 389 U.S. at 220.

III.

CERTIORARI SHOULD BE GRANTED TO CONSIDER THE EFFECT OF CASES SUCH AS *VACA v. SIPES*, 386 U.S. 171 (1967) ON PROCEEDINGS SUBSEQUENT GRIEVANCE HANDLING AND TO ENUNCIATE THE SUBSTANTIVE PRINCIPLES OF FEDERAL LABOR LAW IN AN AREA NOT PREVIOUSLY DEALT WITH BY THIS COURT.

The Court of Appeals considered the principles of fair representation discussed in *Vaca v. Sipes*, 386 U.S. 171 (1967) to be controlling; Employees agree but contend that the application of the reasoning upon which they are founded leads to the opposite result from that reached below. *Vaca* and *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965) (as well as *Local 12, United Rubber Workers v. NLRB*, 368 F.2d 12 (5th Cir. 1966), *cert. denied*, 389 U.S. 387 (1967), relied on below) considered the assailability of the union's handling of the grievance mechanisms prior to arbitration. As detailed at length in *Vaca*, see 386 U.S. at 191-92, many reasons exist for giving the union considerable leeway at this stage.[11] But once the union has carried through the grievance procedures, determined that arbitration is appropriate, the arbitrator has been selected, and the arbitration hearing convened, then the reasons for the strictures on the employee participation dis-

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[11] *E.g.*, the dispassionate union will more likely be able to settle short of arbitration, frivolous grievances are weeded out, consistency, spotting major problem areas in the contract, maintenance of confidence by the comapny and the employees in the union, avoidance of the vagaries of unsystematic negotiation, keeping the number of arbitrations (and hence the cost) down, preventing harassment by litigiously inclined employees, requiring exhaustion of lower-level remedies.

appear. In fact, the "intensely practical considerations . . .[12] which emerge from the intricate relationship between the duty of fair representation and enforcement of collective bargaining contracts," 389 U.S. at 183, tip the balance the other way.

This distinction (and possible conflict) between the general duty of fair representation and the requirement of due process at a hearing was recognized in *Humphrey v. Moore*, 375 U.S. 335, 349 (1964):

> Even though the union acted in good faith . . . were the . . . employees, if the union was going to oppose them,[13] deprived of a fair hearing by having *inadequate representation*[14] at the hearing? (emphasis added).

The reposing of considerable discretion in the union for grievance handling is a necessary incident of the statutory scheme of labor-management relations; nevertheless the potential for disaffection among the rank and file is clear. This disaffection may be alleviated by giving the employee a voice, through his chosen counsel, in the arbitration. The reasons given in *Vaca* (and in the Court of Appeals' opinion herein) for subordinating the interest of the individual no longer apply; to the contrary, if there are differences between the employee and his union, it is most appropriate that they be aired at the adversary, judicial-type proceeding before an impartial tribunal (the union, of course, still represented).

Allowing independent representation of the employee is more than a palliative—it is due process. Further, there is a

[12]The elided phrases indicate a slighdy different context from the use of the quotation here; nevertheless it aptly describes the present situation.

[13]Here the Union did not unequivocally advocate full relief for the 16 employees who were not reinstated. (R. 33).

[14]Here Employees alleged that they were "inadequately represented." (R. 18, 60).

widening perception of a growing identity of interest between unions and management, *cf. Glover v. St. Louis-S.F. Ry.*, 89 S. Ct. 548 (1969), which may require increasing attention in the development of the federal "common law" of labor relations. The carefully wrought structure of federal labor law must surely crumble if the members come to regard their unions as unassailable monoliths. It would seem that our courts, imbued with the principles of the Declaration of Independence and the Bill of Rights, should hesitate to subordinate the interests of the individual to the "interests of the group" (3a), except upon a showing of necessity.

Nor is the problem merely one of form—despite the summary treatment below the record suggests that the precipitating incident, an unauthorized work stoppage, generated an unavoidable conflict of interest on the part of the Unions. Punishment of wildcat strikers serves the Unions' interest in maintaining internal discipline and living up to the spirit of the no-strike clause, thus maintaining their credibility at the bargaining table. But when, in furtherance of their duty of fair representation, the Unions brought the Employees to the arbitration (*i.e.*, adversary, quasi-judicial), stage, they were entitled to a vigorous advocate unhampered by divided loyalties. This is the opposite of *NAACP v. Button*, 371 U.S. 415, 443 (1963), where "the aims and interests of NAACP have not been shown to conflict with those of its members and nonmember Negro litigants . . . ." The Employees no doubt felt that they had retained able counsel who, in his presentation of evidence and general handling of the proceedings, would have been of "inestimable value" *cf. Reynolds v. Cochran*, 365 U.S. 525 (1961).

IV.

CERTIORARI SHOULD BE GRANTED TO CORRECT THE MANIFEST ERROR OF THE LOWER COURT.

There remains a problem in the Court of Appeals' interpretation of the record which merits independent consideration. The court found that (a) "appellants were represented in good faith . . . ." (4a), and (b) "indeed the representation was adequate" (*id.*). The first finding, standing alone, would be at best tenuous, as all the court had to go on was its interpretation of the word "inadequate" in the motions to intervene[15] (R. 18, 60). There was no possible way, however, that the court could have known whether the representation was "adequate"—there is absolutely no record on the question except the allegation to the contrary; thus the validity of the first conclusion of the fact is drawn into further question. Correction by this Court is called for when a court of appeals approves a district court disposition made without findings or conclusions, and then proceeds to make

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[15]Consideration of the text of the arbitrator's decision (R. 22-60) could not be helpful as it of course could not shed light on what may *not* have been presented to the arbitrator nor could it have properly suggested alternative means of presentation. Performance could not have been evaluated even from the transcript of the arbitration proceedings as it is not in the record.

its own findings with no basis in the record. *Cf. Thompson v. City of Louisville*, 362 U.S. 199 (1960).

Respectfully submitted,

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APPENDIX

IN THE

United States Court of Appeals

FROM THE FIFTH CIRCUIT

No. 26051

JERRY J. ACUFF, ET AL.,

Appellants,

versus

UNITED PAPERMAKERS AND PAPERWORKERS, AFL-CIO, ET AL.,

Appellees.

Appeal from the United States District Court for the Southern District of Alabama

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(November 27, 1968)

Before BROWN, Chief Judge, RIVES and McENTEE,* Circuit Judges.

McENTEE, Circuit Judge: This is an appeal from the denial of a motion to intervene in a suit to compel arbitration brought under § 301 of the Labor Management Relations Act. 29 U.S.C. § 185.

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*From the First Circuit, sitting by designation.

During November 1966 an unauthorized work stoppage occurred at the plant of the Scott Paper Company, (the Company) in Mobile, Alabama. As a consequence the Company discharged some sixty-three employees a few weeks later. After the Company refused the Union's demand to arbitrate these dismissals certain affiliates of the AFL-CIO (the Union) brought this suit to compel arbitration.[1] Eventually the Company entered into a stipulation with the Union to arbitrate; whereupon the district court ordered the parties to proceed to arbitration but retained jurisdiction over the cause.

The arbitrator denied the grievance of sixteen employees because of their conduct in connction with the illegal strike. He further ordered that the discharge of the other employees be reduced to disciplinary layoff and each such employee was reinstated without loss of seniority but with no back pay. After the issuance of the arbitrator's award, the employees whose grievances were denied entirely and certain of those whose grievances were denied in part filed motions to intervene, together with complaints and motions to vacate the arbitration award.[2] The district

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[1] According to the current collective bargaining agreement, the Union was the exclusive representative of all production and maintenance employees; strikes and lock-outs were prohibited disputes or complaints were to be settled by arbitration.

[2] In their motions to intervene the employees invoked Fed. R. Civ. P. 24(a) "in order to assert the claim set forth in their proposed complaint." The complaint in turn suggests that the action arises under 9 U.S.C. § 10. This section, however, speaks of vacation of an award "upon the application of any party to the arbitration." Since the Union and the Company, not the em

court denied the motions to intervene and this appeal followed.

The issue in this case is fundamental, yet simple. In order to effectuate the purposes of the labor statutes employees are empowered to organize. This, of course, has resulted in enormous benefits but entails certain burdens as well. One of these is that to some extent the interests of particular individuals are subordinated to the interests of the group both at the contract negotiation stage and thereafter. *Local 12, United Rubber Workers v. N.L.R.B.*, 5 Cir., 1966, 368 F.2d 12, 17. This is necessary if a union is to function efficiently. As a result, a union may properly determine not to pursue a member's grievance to the arbitration stage at all. "If the individual employee could compel arbitration of his grievance regardless of its merit, the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of independent and unsystematic negotiation". *Vaca* v. *Sipes*, 386 U.S. 171, 191 (1967). It would be paradoxical in the extreme if the union, which is authorized to decide whether a grievance is to be pursued to the arbitration stage at all, could not be authorized to as-

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ployees, were parties to the arbitration, this jurisdictional allegation is clearly deficient. But where intervention is as of right no independent ground of jurisdiction need be asserted. 4 J. Moore, Federal Practice 24.18, at 135-36.

The employees here seek to intervene because they claim that their "interests have and may continue to be inadequately represented by the present plaintiffs." We note, however, that there is no such allegation in their complaints.

sume full responsibility for a grievance it did pursue, without the intervention of the individual union members immediately concerned.

This is not to say, however, that we would afford no relief even if a union in refusing to pursue a grievance or in its manner of advocacy were motivated by animus against an individual union member. But a "breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes,* supra at 190. Certainly this is not such a case. Nothing is alleged that plausibly suggests bad faith on the part of the Union. The Union pursued the grievance with energy and indeed, in large measure, with success. The employees cannot equate lack of complete success with bad faith any more than they could if their own lawyers had been involved.[3]

Not only were appellants represented in good faith, indeed the representation was adequate.[4] Rule 24(a),

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[3]Similarly, it is a different case if the interests of different groups of employees are in irreconcilable conflict. See Clark v. Hein-Werner Corp., 8 Wis.2d 264, 99 N.W.2d 132 (1960). Here the Union could have and, as far as the record reveals, did defend the rights of all the employees with equal zeal.

[4]We cannot accept appellants' contention that the failure of the Union to contest the arbitrator's award in the district court is conclusive of inadequate representation. The grievance procedure is designed to promote industrial harmony. Chaos rather than harmony would result if the Union were compelled under the guise of "adequate representation" to pursue every grievance to arbitration and to challenge every less than completely favorable arbitrator's award in the district court.

however, relied on by appellants, specifies that there can be no intervention as of right if the applicant's interest is adequately represented by existing parties. See *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 688 (1961).[5]

Further, rule 24 in no way speaks to the matter *sub judice*. The collective bargaining agent is the exclusive representative of the unit. See 29 U.S.C. § 159(a). Thus, cases such as this differ entirely from situations in which intervention is ordinarily appropriate. The right to abitration is an incident not of the employment relationship as such but of the collective bargaining relationship. See *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). Under this agreement it is the Union and the Company that have the right to demand arbitration. Thus, they have the right to conduct the arbitration as well.

APPEAL DISMISSED.

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[5]Cf. St. Helena Parish School Board v. Hall, 5 Cir., 287 F.2d 376, cert. denied, 368 U.S. 830 (1961). In that action by Negro students seeking an injunction against the operation of racially segregated schools, it was held that a white child had failed to make a showing that representation of his interest was or might be inadequate for purposes of intervention as or right. This case was decided before the most recent amendments to Rule 24 but we think that the same result would be required under the new language. See Hobson v. Hansen, D.D.C. 1968, 44 FRD 18, 30.

UNITED STATES CONSTITUTION

First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES ARBITRATION ACT
[Section 10, 9 U.S.C. § 10]

§ 10. Same; vacation; grounds; rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators. July 30, 1947, c. 392, § 1, 61 Stat. 669.

NATIONAL LABOR RELATIONS ACT
[Section 9(a), 29 U.S.C. § 159]

§ 159. Representatives and elections—Exclusive representatives; employees' adjustment of grievances directly with employer

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.